



March 14, 2001

ENGROSSED HOUSE BILL No. 1874

DIGEST OF HB 1874 (Updated March 7, 2001 2:31 PM - DI 84)

Citations Affected: IC 5-2; IC 33-11.6; IC 33-17; IC 33-19; IC 34-6; IC 34-13; IC 34-26; IC 35-38; IC 35-45; IC 35-46; noncode.

Synopsis: Domestic protection orders. Provides for the registration and enforcement in Indiana of protection orders issued by another state or an Indian tribe. Eliminates prepayment of filing fees and witness fees for proceedings filed solely to obtain a protective order to prevent domestic violence or enforce a foreign domestic violence protection order. Grants immunity to a governmental entity or employee, including a law enforcement officer, that registers or enforces a court order in good faith without malice. Provides that commission of an offense in the presence or within hearing of a child is an aggravating factor that would justify an increased term of imprisonment or consecutive sentences. Expands the types of protective orders to which the crime of stalking applies. Provides that violation of a protective order issued by an Indian tribe or other related tribal government constitutes invasion of privacy.

Effective: Upon passage; July 1, 2001; July 1, 2002.

Lawson L, Becker, Foley, Young D
(SENATE SPONSORS — CLARK, SIMPSON, KENLEY, ZAKAS, YOUNG R)

January 17, 2001, read first time and referred to Committee on Courts and Criminal Code.
February 8, 2001, amended, reported — Do Pass.
February 13, 2001, read second time, amended, ordered engrossed.
February 14, 2001, engrossed. Read third time, passed. Yeas 93, nays 0.

SENATE ACTION

February 27, 2001, read first time and referred to Committee on Rules and Legislative Procedure.

March 13, 2001, amended, reported favorably — Do Pass; reassigned to Committee on Corrections, Criminal and Civil Procedures.

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EH 1874—LS 7919/DI 51+



March 14, 2001

First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

ENGROSSED HOUSE BILL No. 1874

A BILL FOR AN ACT to amend the Indiana Code concerning domestic protection orders.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 5-2-5-1, AS AMENDED BY P.L.24-2000,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2001]: Sec. 1. The following definitions apply throughout this
4 chapter:

5 (1) "Limited criminal history" means information with respect to
6 any arrest, indictment, information, or other formal criminal
7 charge, which must include a disposition. However, information
8 about any arrest, indictment, information, or other formal criminal
9 charge which occurred less than one (1) year before the date of a
10 request shall be considered a limited criminal history even if no
11 disposition has been entered.

12 (2) "Bias crime" means an offense in which the person who
13 committed the offense knowingly or intentionally:

14 (A) selected the person who was injured; or
15 (B) damaged or otherwise affected property;
16 by the offense because of the color, creed, disability, national
17 origin, race, religion, or sexual orientation of the injured person

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or of the owner or occupant of the affected property or because the injured person or owner or occupant of the affected property was associated with any other recognizable group or affiliation.

(3) "Council" means the security and privacy council created under section 11 of this chapter.

(4) "Criminal history data" means information collected by criminal justice agencies, the United States Department of Justice for the department's information system, or individuals. The term consists of the following:

(A) Identifiable descriptions and notations of arrests, indictments, informations, or other formal criminal charges.

(B) Information regarding an offender (as defined in IC 5-2-12-4) obtained through sex offender registration under IC 5-2-12.

(C) Any disposition, including sentencing, and correctional system intake, transfer, and release.

(5) "Criminal justice agency" means any agency or department of any level of government whose principal function is the apprehension, prosecution, adjudication, incarceration, probation, rehabilitation, or representation of criminal offenders, the location of parents with child support obligations under 42 U.S.C. 653, the licensing and regulating of riverboat gambling operations, or the licensing and regulating of pari-mutuel horse racing operations. The term includes the Medicaid fraud control unit for the purpose of investigating offenses involving Medicaid. The term includes a nongovernmental entity that performs as its principal function the:

(A) apprehension, prosecution, adjudication, incarceration, or rehabilitation of criminal offenders;

(B) location of parents with child support obligations under 42 U.S.C. 653;

(C) licensing and regulating of riverboat gambling operations; or

(D) licensing and regulating of pari-mutuel horse racing operations;

under a contract with an agency or department of any level of government.

(6) "Department" means the state police department.

(7) "Disposition" means information disclosing that criminal proceedings have been concluded or indefinitely postponed.

(8) "Foreign protection order" has the meaning set forth in IC 34-6-2-48.5.

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(9) "Indiana order" has the meaning set forth in IC 5-2-9-2.1.

~~(8)~~ **(10)** "Inspection" means visual perusal and includes the right to make memoranda abstracts of the information.

~~(9)~~ **(11)** "Institute" means the Indiana criminal justice institute established under IC 5-2-6.

~~(10)~~ **(12)** "Law enforcement agency" means an agency or a department of any level of government whose principal function is the apprehension of criminal offenders.

~~(11)~~ **"Protective order" has the meaning set forth in IC 5-2-9-2.1.**

~~(12)~~ **(13)** "Release" means the furnishing of a copy, or an edited copy, of criminal history data.

~~(13)~~ **(14)** "Reportable offenses" means all felonies and those Class A misdemeanors which the superintendent may designate.

~~(14)~~ **(15)** "Request" means the asking for release or inspection of a limited criminal history by noncriminal justice organizations or individuals in a manner which:

(A) reasonably ensures the identification of the subject of the inquiry; and

(B) contains a statement of the purpose for which the information is requested.

~~(15)~~ **(16)** "Unidentified person" means a deceased or mentally incapacitated person whose identity is unknown.

SECTION 2. IC 5-2-5-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 12. (a) On a daily basis, all law enforcement agencies shall enter into the Indiana data and communication system (IDACS) computer the following:

(1) All information concerning stolen or recovered property, including:

(A) motor vehicles;

(B) firearms;

(C) securities;

(D) boats;

(E) license plates; and

(F) other stolen or recovered property.

(2) All information concerning fugitives charged with a crime, including information concerning extradition.

(3) All information concerning runaways, missing and unidentified persons, and missing children (as defined in IC 10-1-7-2), including information concerning the release of such persons to the custody of a parent or guardian.

(4) Information contained in a ~~protective~~ **an Indiana** order, including any modifications or extensions issued by a court and

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1 filed with a law enforcement agency as required in IC 5-2-9-6(f).
 2 **(5) Information contained in a foreign protection order,**
 3 **including any modifications or extensions issued by a tribunal**
 4 **and filed with a law enforcement agency as required in**
 5 **IC 5-2-9-6.3(c).**

6 (b) On a daily basis, all law enforcement agencies shall:

7 (1) enter all information concerning missing children (as defined
 8 in IC 10-1-7-2) into the National Crime Information Center's
 9 Missing Person File;

10 (2) enter into the National Crime Information Center's Wanted
 11 Person File all information concerning warrants issued for a
 12 person who allegedly abducted or unlawfully retained a missing
 13 child; and

14 (3) enter all information concerning unidentified persons into the
 15 National Crime Information Center's Unidentified Person File.

16 (c) If a ~~protective an Indiana~~ order or foreign protection order is
 17 removed from a depository established under IC 5-2-9, the law
 18 enforcement agency responsible for the depository shall delete the
 19 information entered under subsection (a)(4) or **(a)(5)** from the Indiana
 20 data and communication system (IDACS) computer.

21 SECTION 3. IC 5-2-9-1.3 IS ADDED TO THE INDIANA CODE
 22 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 23 1, 2001]: **Sec. 1.3. As used in this chapter, "county clerk" refers to**
 24 **the clerk of the circuit court.**

25 SECTION 4. IC 5-2-9-1.5 IS ADDED TO THE INDIANA CODE
 26 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 27 1, 2001]: **Sec. 1.5. As used in this chapter, "foreign protection**
 28 **order" has the meaning set forth in IC 34-6-2-48.5.**

29 SECTION 5. IC 5-2-9-1.5 IS ADDED TO THE INDIANA CODE
 30 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 31 1, 2001]: **Sec. 1.5. As used in this chapter, "tribunal" has the**
 32 **meaning set forth in IC 34-6-2-144.2.**

33 SECTION 6. IC 5-2-9-2.1 IS AMENDED TO READ AS
 34 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 2.1. (a) As used in this
 35 chapter, **"Indiana order"** means:

36 (1) a protective order issued under:

37 (A) IC 34-26-2-12(1)(A) (or IC 34-4-5.1-5(a)(1)(A) before its
 38 repeal);

39 (B) IC 34-26-2-12(1)(B) (or IC 34-4-5.1-5(a)(1)(B) before its
 40 repeal); or

41 (C) IC 34-26-2-12(1)(C) (or IC 34-4-5.1-5(a)(1)(C) before its
 42 repeal);

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that orders the respondent to refrain from abusing, harassing, or disturbing the peace of the petitioner;

(2) an emergency protective order issued under IC 34-26-2-6(1), IC 34-26-2-6(2), or IC 34-26-2-6(3) (or IC 34-4-5.1-2.3(a)(1)(A), IC 34-4-5.1-2.3(a)(1)(B), or IC 34-4-5.1-2.3(a)(1)(C) before their repeal) that orders the respondent to refrain from abusing, harassing, or disturbing the peace of the petitioner;

(3) a temporary restraining order issued under IC 31-15-4-3(2) **or** IC 31-15-4-3(3), **(or IC 31-16-4-2(a)(2), or IC 31-16-4-2(a)(3),** ~~or~~ IC 31-1-11.5-7(b)(2), or IC 31-1-11.5-7(b)(3) before their repeal) that orders the respondent to refrain from abusing, harassing, or disturbing the peace of the petitioner;

(4) a dispositional decree issued under IC 31-34-20-1, IC 31-37-19-1, or IC 31-37-19-5 (or IC 31-6-4-15.4 or IC 31-6-4-15.9 before their repeal) or an order issued under IC 31-32-13 (or IC 31-6-7-14 before its repeal) that orders a person to refrain from direct or indirect contact with a child in need of services or a delinquent child;

(5) an order issued as a condition of pretrial release, **including release on bail or personal recognizance**, or pretrial diversion, that orders a person to refrain from any direct or indirect contact with another person;

(6) an order issued as a condition of probation that orders a person to refrain from any direct or indirect contact with another person;

(7) a protective order issued under IC 31-15-5 or IC 31-16-5 (or IC 31-1-11.5-8.2 before its repeal) that orders the respondent to refrain from abusing, harassing, or disturbing the peace of the petitioner;

(8) a protective order issued under IC 31-14-16 in a paternity action that orders the respondent to refrain from having direct or indirect contact with another person; ~~or~~

(9) a protective order issued under IC 31-34-17 in a child in need of services proceeding or under IC 31-37-16 in a juvenile delinquency proceeding that orders the respondent to refrain from having direct or indirect contact with a child; **or**

(10) an order issued by a court in Indiana under IC 34-26-2.5-4 to enforce a foreign protection order.

(b) Whenever an **Indiana** order is issued, the **Indiana** order must be captioned in a manner that indicates the type of order issued and the section of the Indiana Code that authorizes the protective order.

SECTION 7. IC 5-2-9-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 5. A depository is established in the

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office of each sheriff and law enforcement agency in Indiana for the purpose of collecting, maintaining, and retaining the following:

(1) ~~protective Indiana orders. issued under IC 34-26-2 (or IC 34-4-5.1 before its repeal) to prevent abuse of a person.~~

(2) ~~A dispositional decree issued under IC 31-34-20-1, IC 31-37-19-1, or IC 31-37-19-5 (or IC 31-6-4-15.4 or IC 31-6-4-15.9 before their repeal) or an injunction issued under IC 31-32-13 (or IC 31-6-7-14 before its repeal) that requires a person to refrain from direct or indirect contact with a child in need of services or a delinquent child.~~

(3) ~~Temporary restraining orders issued under IC 31-15-4-3(2); IC 31-15-4-3(3); IC 31-16-4-2(a)(2); or IC 31-16-4-2(a)(3) (or IC 31-1-11.5-7(b)(2); or IC 31-1-11.5-7(b)(3) before their repeal) that orders the respondent to refrain from abusing, harassing, or disturbing the peace of the petitioner.~~

(4) ~~Orders issued as a condition of pretrial release or pretrial diversion that require a person to refrain from any direct or indirect contact with another person.~~

(5) ~~Orders issued as a condition of probation that require a person to refrain from any direct or indirect contact with another person.~~

(6) ~~Permanent protective orders issued under IC 31-15-5 or IC 31-16-5 (or IC 31-1-11.5-8.2 before its repeal) that order the respondent to refrain from abusing, harassing, or disturbing the peace of the petitioner.~~

(2) Foreign protection orders.

SECTION 8. IC 5-2-9-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 6. (a) The clerk of a court that issues an **Indiana** order shall provide a copy of the **Indiana** order to the following:

(1) Each party.

(2) A law enforcement agency of the municipality in which the person protected by the **Indiana** order resides.

(3) If the person protected by the **Indiana** order does not reside in a municipality, the sheriff of the county in which the protected person resides.

(b) The clerk of a court that issues an **Indiana** order or the clerk of a court in which a petition is filed shall:

(1) maintain a confidential file to secure any confidential information about a protected person designated on any form prescribed or approved by the division of state court administration; and

(2) provide a copy of the confidential form that accompanies the



Indiana order to the following:

(A) The sheriff of the county in which the **Indiana** order was issued.

(B) The law enforcement agency of the municipality, if any, in which the protected person resides.

(C) Any other sheriff or law enforcement agency designated in the **Indiana** order that has jurisdiction over the area in which a protected person may be located or protected.

(c) A sheriff or law enforcement agency that receives an **Indiana** order under subsection (a) and a confidential form under subsection (b) shall:

(1) maintain a copy of the **Indiana** order in the depository established under this chapter;

(2) enter:

(A) the date and time the sheriff or law enforcement agency receives the **Indiana** order;

(B) the location of the person who is subject to the **Indiana** order, **if reasonably ascertainable from the information received;**

(C) the name and identification number of the officer who serves the **Indiana** order; ~~and~~

(D) the manner in which the **Indiana** order is served;

(E) the name of the petitioner and any other protected parties;

(F) the Social Security number, date of birth, and physical description of each person who is the subject of the Indiana protection order, if reasonably ascertainable from the information received;

(G) the date the Indiana protection order expires;

(H) a caution indicator stating whether a person who is the subject of the Indiana protection order is believed to be armed and dangerous, if reasonably ascertainable from the information received; and

(I) if furnished, a Brady record indicator stating whether a person who is the subject of the Indiana protection order is prohibited from purchasing or possessing a firearm under federal law, if reasonably ascertainable from the information received;

on the copy of the **Indiana** order or the confidential form; and

(3) establish a confidential file in which a confidential form that contains information concerning a protected person is kept.

(d) An **Indiana** order may be removed from the depository

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established under this chapter only if the sheriff or law enforcement agency that administers the depository receives:

- (1) a notice of termination on a form prescribed or approved by the division of state court administration;
- (2) an order of the court; or
- (3) a notice of termination and an order of the court.

(e) If an **Indiana** order in a depository established under this chapter is terminated, ~~or expires~~, the person who obtained the protective order must file a notice of termination on a form prescribed or approved by the division of state court administration with the clerk of the court. The clerk of the court shall provide a copy of the notice of termination **of an Indiana** ~~or~~ order to each of the depositories to which the **Indiana** order and a confidential form were sent. The clerk of the court shall maintain the notice of termination in the court's file.

(f) If an **Indiana** order or form in a depository established under this chapter is extended or modified, the person who obtained the extension or modification must file a notice of extension or modification on a form prescribed or approved by the division of state court administration with the clerk of the court. The clerk of the court shall provide a copy of the notice of extension or modification **of an Indiana** ~~or~~ order to each of the depositories to which the **Indiana** order and a confidential form were sent. The clerk of the court shall maintain the notice of extension or modification **of an Indiana order** in the court's file.

(g) The clerk of a court that issued an order terminating an **Indiana order that is an** emergency protective order shall provide a copy of the **Indiana** order to the following:

- (1) Each party.
- (2) The law enforcement agency provided with a copy of the **emergency protective Indiana** order under subsection (a).

SECTION 9. IC 5-2-9-6.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 6.3. (a) A county clerk that accepts a foreign protection order for filing under IC 34-26-2.5-12 shall provide a copy of the foreign protection order to the following:**

- (1) The person filing the foreign protection order.**
- (2) A law enforcement agency of the municipality in which the person protected by the foreign protection order resides.**
- (3) If the person protected by the foreign protection order does not reside in a municipality, the sheriff of the county in which the protected person resides.**

(b) A county clerk that accepts a foreign protection order for



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filing under IC 34-26-2.5-12 shall:

(1) maintain a confidential file to secure any confidential information about a protected person designated on any form prescribed or approved by the division of state court administration; and

(2) provide a copy of the confidential form that accompanies the foreign protection order to the following:

(A) The sheriff of the county where the county clerk maintains the county clerk's principal office.

(B) The law enforcement agency of the municipality, if any, in which the protected person resides.

(C) Any other sheriff or law enforcement agency that the county clerk has reason to believe has jurisdiction over the area in which a protected person may be located or protected.

(c) A sheriff or law enforcement agency that receives a foreign protection order under subsection (a) and a confidential form under subsection (b) shall:

(1) maintain a copy of the foreign protection order in the depository established under this chapter;

(2) enter:

(A) the name of the petitioner and any other protected parties;

(B) the date and time the sheriff or law enforcement agency received the foreign protection order;

(C) the location of each person who is the subject to the foreign protection order, if reasonably ascertainable from the information received;

(D) the date the foreign protection order expires;

(E) the tribunal and contact information, including the name and telephone number of the presiding officer or clerk of the issuing tribunal, if reasonably ascertainable from the information received;

(F) the Social Security number, date of birth, and physical description of each person who is the subject to the foreign protection order, if reasonably ascertainable from the information received;

(G) a caution indicator stating whether a person who is the subject of the foreign protection order is believed to be armed and dangerous, if reasonably ascertainable from the information received;

(H) if furnished, a Brady record indicator stating whether

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a person who is the subject of the foreign protection order is prohibited from purchasing or possessing a firearm under federal law, if reasonably ascertainable from the information received;

(I) the name and identification number of the officer who serves a foreign protection order, if reasonably ascertainable from the information received; and

(J) the manner in which the foreign protection order is served, if reasonably ascertainable from the information received;

on the copy of the foreign protection order or the confidential form; and

(3) establish a confidential file in which a confidential form that contains information concerning a protected person is kept.

(d) A foreign protection order may be removed from the depository established under this chapter only if the sheriff or law enforcement agency that administers the depository receives:

(1) a notice of termination on a form prescribed or approved by the division of state court administration;

(2) an order of the tribunal issuing the foreign protection order; or

(3) a notice of termination and an order of a tribunal issuing the protection order.

(e) If a foreign protection order in a depository established under this chapter is terminated, the person who obtained the protective order must file a notice of termination on a form prescribed or approved by the division of state court administration with the county clerk where the foreign protection order was filed. The county clerk shall provide a copy of the notice of termination of a foreign protection order or order of a tribunal to each of the depositories to which the foreign protection order and a confidential form were sent. The county clerk shall maintain the notice of termination in the court's file.

(f) If a foreign protection order or form in a depository established under this chapter is extended or modified, the person who obtained the extension or modification must file a notice of extension or modification on a form prescribed or approved by the division of state court administration with the county clerk where the foreign protection order was filed. The county clerk shall provide a copy of the notice of extension or modification of a foreign protection order or order of a tribunal to each of the

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1 **depositories to which the Indiana order and a confidential form**
 2 **were sent. The county clerk shall maintain the notice of extension**
 3 **or modification of a foreign protection order in the court's file.**

4 SECTION 10. IC 5-2-9-7 IS AMENDED TO READ AS FOLLOWS
 5 [EFFECTIVE JULY 1, 2001]: Sec. 7. (a) Any information:

6 (1) in a confidential form or any part of a confidential form
 7 prescribed or approved by the division of state court
 8 administration that must be filed with an **Indiana order or**
 9 **foreign protection order;** or

10 (2) otherwise acquired concerning a protected person, **except the**
 11 **nonconfidential part of a petition for a protective order that**
 12 **is prescribed or approved by the division of state court**
 13 **administration under IC 34-26-2-2(2);**

14 is confidential and may not be divulged to any respondent or defendant.

15 (b) Information described in subsection (a) may only be used by:

- 16 (1) a court;
- 17 (2) a sheriff;
- 18 (3) another law enforcement agency;
- 19 (4) a prosecuting attorney; or
- 20 (5) a court clerk;

21 to comply with a law concerning the distribution of the information.

22 SECTION 11. IC 5-2-9-8 IS AMENDED TO READ AS FOLLOWS
 23 [EFFECTIVE JULY 1, 2001]: Sec. 8. A law enforcement agency that
 24 receives a copy of an **Indiana order or foreign protection order** shall
 25 enter the information received into the Indiana data and communication
 26 system (IDACS) computer under IC 5-2-5-12.

27 SECTION 12. IC 33-11.6-4-15 IS AMENDED TO READ AS
 28 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 15. (a) **Subject to**
 29 **subsection (c),** the costs consist of:

30 (1) a township docket fee equal to five dollars (\$5) plus forty-five
 31 percent (45%) of the infraction or ordinance violation costs fee
 32 under IC 33-19-5-2;

33 (2) bailiff's service of process by registered or certified mail fee
 34 of six dollars (\$6) for each service;

35 (3) the cost for the personal service of process by the bailiff or
 36 other process server in the amount of eight dollars (\$8) for each
 37 service, with the exception that:

38 (A) personal service to execute a warrant for a protective order
 39 under IC 34-26-2 (or IC 34-4-5.1 before its repeal) shall cost
 40 a fee of twelve dollars (\$12); and

41 (B) writs of restitution and writs of replevin shall cost a fee of
 42 twelve dollars (\$12);



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- (4) witness fees, if any, in the amount provided by IC 33-19-1-6 to be taxed and charged in the circuit court of the county; and
 (5) a redocketing fee, if any, of five dollars (\$5).

Subject to subsection (c), the docket fee and the cost for the initial service of process shall be paid upon the institution of each case. **Subject to subsection (c),** the cost of service rendered subsequent to the initial service shall be assessed and paid after such service has been made, and the cost of witness fees shall be paid before the witnesses are called.

(b) If the amount of the township docket fee computed under subsection (a)(1) is not equal to a whole number, the amount shall be rounded to the next highest whole number.

(c) The provisions of IC 33-19-4.5 (costs related to domestic violence offenses) apply to a small claims court, bailiff, sheriff, and witnesses to the same extent as if the small claims court were a court listed in IC 33-19-1-1.

SECTION 13. IC 33-17-1-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 11. (a) The clerk shall provide each person filing a petition for the issuance of a protective order under IC 34-26-2 without the assistance of an attorney the following information:

- (1) The procedure for obtaining a protective order.
- (2) When a protective order becomes effective.
- (3) Procedures to follow when a protective order is violated.
- (4) Information concerning the waiver of fees under IC 33-19-2-6.**

(b) The information required under subsection (a) must be printed in a manner that can be easily understood by a person who is not an attorney.

(c) The attorney general shall develop an appropriate form to provide the information referred to in subsection (a).

SECTION 14. IC 33-19-4.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]:

Chapter 4.5. Costs Related to Domestic Violence Offenses

Sec. 1. This chapter applies to a person who files a motion, petition, or complaint with a court seeking a protective order or an order to enforce a foreign protection order to protect the person from any of the following:

- (1) Domestic violence.**
- (2) Sexual assault.**
- (3) Stalking.**



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1 **Sec. 2. (a) As used in this chapter, "domestic violence" means**
 2 **conduct against a person who is a family or household member**
 3 **that is prohibited by:**

4 **(1) a misdemeanor or felony under the laws of the United**
 5 **States, a state, or an Indian tribe that has as an element the**
 6 **use, attempted use, or threatened use of physical force against**
 7 **the person or property of another; or**

8 **(2) any other misdemeanor or felony under the laws of the**
 9 **United States, a state, or an Indian tribe that, by its nature,**
 10 **involves a substantial risk that physical force against the**
 11 **person or property of another may be used in the course of**
 12 **committing the offense;**

13 **regardless of whether the conduct results in criminal prosecution**
 14 **or the person who engages in the conduct is an adult.**

15 **(b) The term does not include an act of self-defense.**

16 **Sec. 3. For purposes of this chapter, a person is a family or**
 17 **household member of another person if the person is any of the**
 18 **following:**

19 **(1) A spouse or former spouse of the other person.**

20 **(2) A person who has a child in common with the other**
 21 **person.**

22 **(3) A person who is living or was living with the other person.**

23 **(4) A person who is dating or was dating the other person.**

24 **(5) A person who is having a sexual relationship or was having**
 25 **a sexual relationship with the other person.**

26 **(6) The natural or adopted child of the other person.**

27 **(7) A person less than eighteen (18) years of age who is related**
 28 **to a person described in subdivisions (1) through (6).**

29 **Sec. 4. As used in this chapter, "foreign protection order" has**
 30 **the meaning set forth in IC 34-6-2-48.5.**

31 **Sec. 5. As used in this chapter, "Indian tribe" has the meaning**
 32 **set forth in IC 34-6-2-66.7.**

33 **Sec. 6. As used in this chapter, "protective order" has the**
 34 **meaning set forth for "protection order" in IC 34-6-2-121.6.**

35 **Sec. 7. As used in this chapter, "sexual assault" means conduct**
 36 **that is:**

37 **(1) prohibited by IC 35-42-4 (sex crimes), IC 35-44-7 (sexual**
 38 **misconduct by a service provider with a detainee), or**
 39 **IC 35-46-1-3 (incest);**

40 **(2) prohibited by a misdemeanor or felony under the laws of**
 41 **the United State, a state, or an Indian tribe that is**
 42 **substantially similar to an offense described in subdivision**

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(1); or

(3) an attempt to engage in conduct described in subdivision

(1) or (2);

regardless of whether the conduct results in criminal prosecution or the person who engages in the conduct is an adult.

Sec. 8. As used in this chapter, "stalking" means conduct that is:

(1) prohibited by IC 35-45-10-5 (stalking);

(2) prohibited by a misdemeanor or felony under the laws of the United State, a state, or an Indian tribe that is substantially similar to an offense described in subdivision

(1); or

(3) an attempt to engage in conduct described in subdivision

(1) or (2);

regardless of whether the conduct results in criminal prosecution or the person who engages in the conduct is an adult.

Sec. 9. Notwithstanding any other law, the clerk may not collect a fee or other reimbursement for the filing, issuance, registration, or service of any of the following:

(1) A warrant related to an action for a protective order or to enforce a foreign protection order.

(2) A motion, petition, or complaint for a protective order or to enforce a foreign protection order.

(3) A protective order or an order enforcing a foreign protection order.

(4) A witness subpoena related to an action for a protective order or to enforce a foreign protection order.

If a person seeks a protective order or an order enforcing a foreign protection order as part of another proceeding, the clerk may not collect a separate fee or reimbursement for the filing, issuance, registration, or service of the papers described in subdivisions (1) through (4).

Sec. 10. Prepayment of costs described in section 9 of this chapter are not required if the person, or a person acting on the person's behalf, alleges under oath or affirmation in the motion, petition, or complaint seeking the protective order or order enforcing a foreign protection order that the person is or fears that the person will be a victim of domestic violence, sexual assault, or stalking.

Sec. 11. Unless the court finds evidence of fraud, the court shall waive the obligation that the person seeking the protective order or order enforcing a foreign protection order would otherwise have to pay the costs described in section 9 of this chapter if:



(1) the person, or another person acting on the person's behalf, makes the allegations described in section 10 of this chapter; or

(2) the court otherwise determines that the person is a person seeking protection from domestic violence, sexual assault, or stalking.

Sec. 12. This section does not prevent the collecting of costs from a party against whom a protective order or order enforcing a foreign protection order is sought.

SECTION 15. IC 33-19-5-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 4. (a) For each civil action except:

(1) proceedings to enforce a statute defining an infraction under IC 34-28-5-4 (or IC 34-4-32-4 before its repeal);

(2) proceedings to enforce an ordinance under IC 34-28-5-4 (or IC 34-4-32-4 before its repeal);

(3) proceedings in juvenile court under IC 31-34 or IC 31-37;

(4) proceedings in paternity under IC 31-14;

(5) proceedings in small claims court under IC 33-11.6; and

(6) proceedings in actions under section 6 of this chapter.

the clerk shall collect from the party filing the action a civil costs fee of one hundred dollars (\$100). ~~except as provided in subsection (b):~~

~~(b) For each proceeding for the issuance of a protective order under IC 34-26-2:~~

~~(1) the clerk shall initially collect thirty-five dollars (\$35) of the civil costs fee from the party that filed the action or the court may waive the initial thirty-five dollars (\$35) of the civil costs fee for the party that filed the action; and~~

~~(2) upon disposition of the protective order petition under IC 34-26-2, the court may order that:~~

~~(A) the remainder of the civil costs fee, in the amount of sixty-five dollars (\$65), be assessed against the respondent in the action as provided in IC 34-26-2-4 or against the party that filed the action; and~~

~~(B) the initial thirty-five dollar (\$35) civil costs fee be reimbursed by the respondent in the action to the party that filed the action or assessed against the respondent in the action as provided in IC 34-26-2-4.~~

~~(c) (b)~~ In addition to the civil costs fee collected under this section, the clerk shall collect the following fees if they are required under IC 33-19-6:

(1) A document fee.



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(2) A support and maintenance fee.

SECTION 16. IC 34-6-2-21.2 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 21.2. "City or town law enforcement agency", for purposes of IC 34-26-2.5-15, means the department or agency of a city or town whose principal function is the apprehension of criminal offenders.**

SECTION 17. IC 34-6-2-48.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 71.5. "Foreign protection order", for purposes of IC 34-26-2.5, means a protection order issued by a tribunal of:**

(1) another state; or

(2) an Indian tribe;

regardless of whether the protection order was issued in an independent proceeding or as part of another criminal or civil proceeding.

SECTION 18. IC 34-6-2-49 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 49. "Governmental entity", for purposes of IC 34-13-2, IC 34-13-3, ~~and~~ IC 34-13-4, **and IC 34-26-2.5**, means the state or a political subdivision of the state.

SECTION 19. IC 34-6-2-64 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 64. "In good faith", for purposes of **IC 34-26-2.5** and IC 34-30-15, refers to an act taken:

(1) without malice;

(2) after a reasonable effort to obtain the facts of the matter; and

(3) in the reasonable belief that the action taken is warranted by the facts known.

SECTION 20. IC 34-6-2-66.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 66.7. "Indian tribe", for purposes of sections 48.5, 71.7, and 121.6 of this chapter and IC 34-26-2.5, means an Indian:**

(1) tribe;

(2) band;

(3) pueblo;

(4) nation; or

(5) group or community that is organized, including an Alaska Native village or regional or village corporation as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.);

that is recognized as eligible for the special programs and services



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provided by the United States to Indians because of their special status as Indians.

SECTION 21. IC 34-6-2-71.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 71.7. "Issuing state or Indian tribe", for purposes of IC 34-26-2.5, means the state or Indian tribe whose tribunal issues a protection order.**

SECTION 22. IC 34-6-2-73.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 73.3. "Law enforcement officer", for purposes of IC 34-26-2.5, has the meaning set forth in IC 35-41-1-17.**

SECTION 23. IC 34-6-2-86.4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 86.4. "Mutual foreign protection order", for purposes of IC 34-26-2.5, means a foreign protection order that includes provisions in favor of both the protected individual seeking enforcement of the order and the respondent.**

SECTION 24. IC 34-6-2-121.4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 121.4. "Protected individual", for purposes of section 86.4 of this chapter and IC 34-26-2.5, means an individual protected by a protection order.**

SECTION 25. IC 34-6-2-121.6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 121.6. (a) "Protection order", for purposes of sections 48.5, 121.4, and 130.7 of this chapter and IC 34-26-2.5, means an injunction or other order, issued by a tribunal of the issuing state or Indian tribe, to prevent an individual from engaging in:**

- (1) violent or threatening acts against;**
- (2) harassment of;**
- (3) contact or communication with; or**
- (4) physical proximity to;**

another person, including temporary and final orders issued by civil and criminal courts.

(b) The term does not include a support or child custody order issued under the dissolution and child custody laws of a state or Indian tribe, except to the extent that the order is entitled to full faith and credit under a federal law other than 18 U.S.C. 2265.

(c) The term applies to an order regardless of whether the order is obtained by filing an independent action or as a pendente lite



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1 order in another proceeding if any civil order was issued in
2 response to a complaint, petition, or motion filed by or on behalf of
3 a person seeking protection.

4 SECTION 26. IC 34-6-2-123 IS AMENDED TO READ AS
5 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 123. "Public
6 employee", for purposes of IC 34-13-2, IC 34-13-3, ~~and~~ IC 34-13-4,
7 **and IC 34-26-2.5**, has the meaning set forth in section 38 of this
8 chapter.

9 SECTION 27. IC 34-6-2-130.7 IS ADDED TO THE INDIANA
10 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
11 [EFFECTIVE JULY 1, 2001]: Sec. 130.7. **"Respondent", for**
12 **purposes of section 86.4 of this chapter and IC 34-26-2.5, means the**
13 **individual against whom the enforcement of a protection order is**
14 **sought.**

15 SECTION 28. IC 34-6-2-138 IS AMENDED TO READ AS
16 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 138. "Sheriff":

17 (1) for purposes of IC 34-26-2.5, refers to the county sheriff;
18 and

19 (2) for purposes of IC 34-47-4, means the sheriff of the county in
20 which a court issues a writ of attachment under IC 34-47-4 (or
21 IC 34-4-9 before its repeal).

22 SECTION 29. IC 34-6-2-140 IS AMENDED TO READ AS
23 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 140. "State":

24 (1) for purposes of IC 34-13-3 means Indiana and its state
25 agencies; and

26 (2) for purposes of sections 48.5 and 71.7 of this chapter and
27 **IC 34-26-2.5, has the meaning set forth in IC 1-1-4-5.**

28 SECTION 30. IC 34-6-2-144.2 IS ADDED TO THE INDIANA
29 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
30 [EFFECTIVE JULY 1, 2001]: Sec. 144.2. **"Tribunal", for purposes**
31 **of sections 48.5 and 121.6 of this chapter and IC 34-26-2.5, means**
32 **a court, agency, or other entity authorized by law to issue or**
33 **modify a protection order.**

34 SECTION 31. IC 34-13-3-3, AS AMENDED BY P.L.142-1999,
35 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
36 JULY 1, 2001]: Sec. 3. A governmental entity or an employee acting
37 within the scope of the employee's employment is not liable if a loss
38 results from:

39 (1) the natural condition of unimproved property;

40 (2) the condition of a reservoir, dam, canal, conduit, drain, or
41 similar structure when used by a person for a purpose that is not
42 foreseeable;



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- 1 (3) the temporary condition of a public thoroughfare that results
- 2 from weather;
- 3 (4) the condition of an unpaved road, trail, or footpath, the
- 4 purpose of which is to provide access to a recreation or scenic
- 5 area;
- 6 (5) the initiation of a judicial or an administrative proceeding;
- 7 (6) the performance of a discretionary function; however, the
- 8 provision of medical or optical care as provided in IC 34-6-2-38
- 9 shall be considered as a ministerial act;
- 10 (7) the adoption and enforcement of or failure to adopt or enforce
- 11 a law (including rules and regulations), unless the act of
- 12 enforcement constitutes false arrest or false imprisonment;
- 13 (8) an act or omission performed in good faith and without malice
- 14 under the apparent authority of a statute **or court order** which is
- 15 invalid, **including an arrest or imprisonment related to the**
- 16 **enforcement of a statute or court order**, if the employee would
- 17 not have been liable had the statute **or court order** been valid;
- 18 (9) the act or omission of anyone other than the governmental
- 19 entity or the governmental entity's employee;
- 20 (10) the issuance, denial, suspension, or revocation of, or failure
- 21 or refusal to issue, deny, suspend, or revoke, any permit, license,
- 22 certificate, approval, order, or similar authorization, where the
- 23 authority is discretionary under the law;
- 24 (11) failure to make an inspection, or making an inadequate or
- 25 negligent inspection, of any property, other than the property of
- 26 a governmental entity, to determine whether the property
- 27 complied with or violates any law or contains a hazard to health
- 28 or safety;
- 29 (12) entry upon any property where the entry is expressly or
- 30 impliedly authorized by law;
- 31 (13) misrepresentation if unintentional;
- 32 (14) theft by another person of money in the employee's official
- 33 custody, unless the loss was sustained because of the employee's
- 34 own negligent or wrongful act or omission;
- 35 (15) injury to the property of a person under the jurisdiction and
- 36 control of the department of correction if the person has not
- 37 exhausted the administrative remedies and procedures provided
- 38 by section 7 of this chapter;
- 39 (16) injury to the person or property of a person under supervision
- 40 of a governmental entity and who is:
- 41 (A) on probation; or
- 42 (B) assigned to an alcohol and drug services program under

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1 IC 12-23, a minimum security release program under
 2 IC 11-10-8, or a community corrections program under
 3 IC 11-12;
 4 (17) design of a highway (as defined in IC 9-13-2-73) if the
 5 claimed loss occurs at least twenty (20) years after the public
 6 highway was designed or substantially redesigned; except that
 7 this subdivision shall not be construed to relieve a responsible
 8 governmental entity from the continuing duty to provide and
 9 maintain public highways in a reasonably safe condition;
 10 (18) development, adoption, implementation, operation,
 11 maintenance, or use of an enhanced emergency communication
 12 system;
 13 (19) injury to a student or a student's property by an employee of
 14 a school corporation if the employee is acting reasonably under a
 15 discipline policy adopted under IC 20-8.1-5.1-7(b); ~~or~~
 16 (20) an error resulting from or caused by a failure to recognize the
 17 year 1999, 2000, or a subsequent year, including an incorrect date
 18 or incorrect mechanical or electronic interpretation of a date, that
 19 is produced, calculated, or generated by:
 20 (A) a computer;
 21 (B) an information system; or
 22 (C) equipment using microchips;
 23 that is owned or operated by a governmental entity. However, this
 24 subdivision does not apply to acts or omissions amounting to
 25 gross negligence, willful or wanton misconduct, or intentional
 26 misconduct. For purposes of this subdivision, evidence of gross
 27 negligence may be established by a party by showing failure of a
 28 governmental entity to undertake an effort to review, analyze,
 29 remediate, and test its electronic information systems or by
 30 showing failure of a governmental entity to abate, upon notice, an
 31 electronic information system error that caused damage or loss;
 32 **or**
 33 **(21) an act or omission performed in good faith and without**
 34 **malice under the apparent authority of a court order**
 35 **described in IC 35-46-1-15.1 that is invalid, including an**
 36 **arrest or imprisonment related to the enforcement of the**
 37 **court order, if the employee would not have been liable had**
 38 **the court order been valid.**
 39 However, subdivision (20) expires on June 30, 2003.
 40 SECTION 32. IC 34-26-2-1 IS AMENDED TO READ AS
 41 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 1. A person may
 42 petition any court of record **or a small claims court established under**

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1 **IC 33-11.6-1-3** for a protective order on behalf of that person or a
 2 member of the petitioner's household.

3 SECTION 33. IC 34-26-2-2 IS AMENDED TO READ AS
 4 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 2. The petition:

5 (1) must include the name of the petitioner and the name and
 6 address (if known) of the respondent;

7 (2) must include, **on a separate or detachable nonconfidential**
 8 **form prescribed or approved by the division of state court**
 9 **administration:**

10 (A) any allegation concerning the date or manner of specific
 11 acts or feared acts of abuse, harassment, or disruption of the
 12 peace of the petitioner or members of the petitioner's
 13 household or any allegations concerning specific damage to or
 14 the fear of damage to any property of the petitioner; **and**

15 **(B) if the petitioner is requesting that the respondent**
 16 **refrain from entering or damaging real property, an**
 17 **indication of whether the petitioner knows or believes that**
 18 **the petitioner and the respondent are disputing who owns,**
 19 **or has a lease or easement to use, the real property;**

20 (3) must include a request that, if the court grants the protective
 21 order, the court shall order the respondent:

22 (A) to refrain from abusing, harassing, or disturbing the peace
 23 of the petitioner, by either direct or indirect contact;

24 (B) to refrain from abusing, harassing, or disturbing the peace
 25 of a member of the petitioner's household, by either direct or
 26 indirect contact;

27 (C) to refrain from entering the property of the petitioner,
 28 jointly owned or leased property of the petitioner and
 29 respondent if the respondent is not the sole owner or lessee, or
 30 any other property as specifically described in the petition;

31 (D) to refrain from damaging any property of the petitioner;

32 (E) if the petitioner and respondent are married and if a
 33 proceeding for dissolution of marriage or legal separation is
 34 not pending:

35 (i) to be evicted from the dwelling of the petitioner if the
 36 respondent is not the sole owner or lessee of the petitioner's
 37 dwelling;

38 (ii) to not transfer, encumber, damage, conceal, or otherwise
 39 dispose of property jointly owned with the petitioner or that
 40 is an asset of the marriage;

41 (iii) to pay child support to the custodian of any minor
 42 children of the parties alone or with the other party;



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(iv) to pay maintenance to the other party; or
 (v) to perform a combination of acts listed in items (i) through (iv);

(4) must be sworn to by the petitioner;

(5) must include a request that the court set a date for a protective order hearing under this chapter;

(6) must be accompanied by a confidential form concerning protective orders prescribed or approved by the division of state court administration; and

(7) may include a request that the court order counseling or other social services, including domestic violence education, for the petitioner, the respondent, or both.

SECTION 34. IC 34-26-2-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 4. **(a) The court:**

(1) shall order the clerk of the court to waive any filing fees required for a proceeding under this chapter if IC 33-19-4.5 applies; and

(2) may order filing fees to be paid by the respondent after a hearing held under this chapter.

(b) The court may:

(1) order the clerk of the court to waive any filing fees required **for a proceeding** under this chapter if the petitioner demonstrates by affidavit that the petitioner is unable to pay the fees due to all relevant circumstances; and

(2) order filing fees to be paid by the respondent after a hearing held under this chapter.

SECTION 35. IC 34-26-2-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 6. **(a) The emergency protective order issued under section 5 of this chapter may direct the respondent to refrain from:**

(1) abusing, harassing, or disturbing the peace of the petitioner by either direct or indirect contact;

(2) abusing, harassing, or disturbing the peace of a member of the petitioner's household, by either direct or indirect contact;

(3) entering the property of the petitioner or any other property as specifically described in the petition; or

(4) damaging any property of the petitioner.

(b) If the court determines on the face of the petition that the petition for a protective order arises out of a dispute over who owns, or has a lease or an easement to use, real property, the court may:

(1) issue an emergency protective order under subsection (a)



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1 **without an order under subsection (a)(3); or**
 2 **(2) deny the emergency protective order, if the likelihood of**
 3 **future abuse or harassment is insubstantial.**

4 SECTION 36. IC 34-26-2-11 IS AMENDED TO READ AS
 5 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 11. (a) When a petition
 6 is filed, the clerk shall issue a summons to appear at a hearing to the
 7 respondent that:

8 (1) gives notice of the date, time, and place of the hearing; and
 9 (2) informs the respondent that the respondent must appear before
 10 the court to answer the petition.

11 (b) The clerk shall serve the respondent with:

12 (1) the summons to appear; **and**
 13 **(2) a copy of the nonconfidential for submitted as part of the**
 14 **petition under section 2(2) of this chapter;**

15 in accordance with Rule 4.1 of the Rules of Trial Procedure.

16 **(c) Before complying with subsection (b)(2), the clerk shall**
 17 **separate the nonconfidential form submitted under section 2(2) of**
 18 **this chapter from the remainder of the petition.**

19 SECTION 37. IC 34-26-2-12, AS AMENDED BY P.L.14-2000,
 20 SECTION 70, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 21 JULY 1, 2002]: Sec. 12. (a) A court shall set a date for a hearing
 22 concerning a petition described in section 2 of this chapter not more
 23 than thirty (30) days after the date the petition is filed with the court.
 24 At the hearing, if at least one (1) of the allegations described in the
 25 petition is proved by a preponderance of the evidence, the court:

26 (1) shall order the respondent:

27 (A) to refrain from abusing, harassing, or disturbing the peace
 28 of the petitioner, by either direct or indirect contact;

29 (B) to refrain from abusing, harassing, or disturbing the peace
 30 of a member of the petitioner's household, by either direct or
 31 indirect contact;

32 (C) to refrain from entering the property of the petitioner,
 33 jointly owned or leased property of the petitioner and the
 34 respondent if the respondent is not the sole owner or lessee, or
 35 any other property as specifically described in the petition;

36 (D) to refrain from damaging any property of the petitioner;
 37 and

38 (E) if the petitioner and respondent are married and if a
 39 proceeding for dissolution of marriage or legal separation is
 40 not pending:

41 (i) to be evicted from the dwelling of the petitioner if the
 42 respondent is not the sole owner or lessee of the petitioner's

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dwelling;

(ii) to not transfer, encumber, damage, conceal, or otherwise dispose of property jointly owned with the petitioner or that is an asset of the marriage;

(iii) to pay child support to the custodian of any minor children of the parties alone or with the other party;

(iv) to pay maintenance to the other party; or

(v) to perform a combination of the acts described in items (i) through (iv);

(2) may order the respondent to refrain from possessing a firearm (as defined in IC 35-47-1-5) during a period not longer than the period that the respondent is under the protective order if the court finds by clear and convincing evidence that the respondent poses a significant threat of inflicting serious bodily injury to the petitioner or a member of the petitioner's household or family; and
(3) may order counseling or other social services, including domestic violence education, for the petitioner or the respondent, or both, and may order the respondent to pay the costs of obtaining counseling or other social services for the petitioner or the respondent, or both.

If the court prohibits the respondent from possessing a firearm under subdivision (2), the court shall notify the state police department of the restriction. The court may also order the confiscation under IC 35-47-3 of any firearms that the court finds the respondent to possess during the period that the protective order is in effect.

(b) If the court determines that the petition for a protective order arises out of a dispute over who owns, or has a lease or an easement to use, real property, the court may:

(1) issue a protective order under subsection (a) without an order under subsection (a)(1)(C) or (a)(1)(D), or both; or

(2) deny the petition for a protective order, if the likelihood of future abuse or harassment against a petitioner is insubstantial.

SECTION 38. IC 34-26-2-18 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 18. If a respondent is ordered to stay away from a petitioner, an invitation by a petitioner to a petitioner's residence or other place where a petitioner is located, does not:**

(1) allow the respondent to go to the residence or other place where a petitioner is located; or

(2) waive or nullify any relief provided by the court in the



1 **order of protection.**

2 SECTION 39. IC 34-26-2.5 IS ADDED TO THE INDIANA CODE
3 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
4 JULY 1, 2001]:

5 **Chapter 2.5. Enforcement of Foreign Protection Orders**

6 **Sec. 1. This chapter applies to a foreign protection order issued**
7 **by a tribunal of the following:**

8 (1) Another state.

9 (2) An Indian tribe.

10 **Sec. 2. A valid foreign protection order shall be accorded full**
11 **faith and credit by the courts in Indiana. A court in Indiana may**
12 **not enforce a foreign protection order issued by a tribunal of an**
13 **issuing state or Indian tribe only if the issuing state or Indian tribe**
14 **does not recognize the standing of a protected individual to seek**
15 **enforcement of the order.**

16 **Sec. 3. A person authorized by Indiana law to seek enforcement**
17 **of a protection order may seek enforcement of a valid foreign**
18 **protection order in a circuit, superior, or probate court in Indiana.**

19 **Sec. 4. A circuit, superior, or probate court shall enforce the**
20 **protection order provisions of an order issued by a tribunal,**
21 **regardless of whether the order was obtained in an independent**
22 **proceeding or as part of another proceeding. In a proceeding to**
23 **enforce a foreign protection order, the circuit, superior, or probate**
24 **court shall follow Indiana procedures for the enforcement of**
25 **protection orders.**

26 **Sec. 5. A foreign protection order is valid if it:**

27 (1) identifies the protected individual and the respondent;

28 (2) is currently in effect;

29 (3) was issued by a tribunal that had jurisdiction over the
30 parties and subject matter under the law of the issuing state
31 or Indian tribe; and

32 (4) either:

33 (A) was issued after the respondent was given reasonable
34 notice and had an opportunity to be heard before the
35 tribunal issued the order; or

36 (B) in the case of an order ex parte, the respondent was
37 given notice and had an opportunity to be heard within a
38 reasonable time after the order was issued, consistent with
39 the rights of the respondent to due process.

40 **Sec. 6. A foreign protection order valid on its face is prima facie**
41 **evidence of its validity.**

42 **Sec. 7. Absence of any of the criteria for validity of a foreign**



1 protection order is an affirmative defense in an action seeking
 2 enforcement of the order or charging a person with a crime for
 3 violation of the foreign protection order.

4 Sec. 8. A circuit, superior, or probate court in Indiana may
 5 enforce mutual protection order provisions of an order of an
 6 issuing state or Indian tribe that favor a respondent only if:

7 (1) the respondent files a written pleading seeking a protection
 8 order from the tribunal of the issuing state or Indian tribe;
 9 and

10 (2) the tribunal of the issuing state or Indian tribe makes
 11 specific findings in favor of the respondent.

12 Sec. 9. If IC 33-19-4.5 applies to the protected individual, no
 13 costs or fees may be imposed against a protected individual in a
 14 proceeding commenced to enforce a foreign protection order.

15 Sec. 10. (a) A law enforcement officer, upon determining that:

16 (1) there is probable cause to believe that a valid foreign
 17 protection order exists; and

18 (2) the order has been violated;

19 shall enforce the order as if it were the order of an Indiana court.
 20 Presentation of a foreign protection order that identifies both the
 21 protected individual and the respondent and, on its face, is
 22 currently in effect constitutes probable cause to believe that a valid
 23 foreign protection order exists. For purposes of this section, the
 24 protection order may be inscribed on a tangible medium or may
 25 have been stored in an electronic or other medium if it is
 26 retrievable in perceivable form. Presentation of a certified copy of
 27 a protection order is not required for enforcement.

28 (b) If a foreign protection order is not presented, an Indiana law
 29 enforcement officer may consider other information in
 30 determining whether there is probable cause to believe that a valid
 31 foreign protection order exists, including information from the
 32 National Crime Information Center (NCIC) protection order file,
 33 Indiana data and communication system (IDACS) under IC 5-2-5,
 34 or a depository established under IC 5-2-9-5.

35 (c) If an Indiana law enforcement officer determines that an
 36 otherwise valid foreign protection order cannot be enforced
 37 because the respondent has not been notified or served with the
 38 order, the officer shall:

39 (1) inform the respondent of the order;

40 (2) make a reasonable effort to serve the order upon the
 41 respondent; and

42 (3) allow the respondent a reasonable opportunity to comply



with the order before enforcing the order.

(d) Registration or filing of an order in Indiana or in the National Crime Information Center (NCIC) protection order file is not required for the enforcement of a valid foreign protection order. Commencement of an action under section 3 of this chapter is not required for the enforcement of a valid foreign protection order.

Sec. 11. Any individual may register a valid foreign protection order in Indiana. To register a foreign protection order, an individual must present the information required under section 12 of this chapter to a county clerk in the judicial district where the protected person resides.

Sec. 12. A county clerk shall accept a foreign protection order for registration upon presentation of the following:

- (1) A copy of a foreign protection order.
- (2) A completed form prescribed or approved by the division of state court administration for the registration of foreign protective orders that includes a format for the protected individual to provide a statement under affirmation that, to the best of the protected individual's knowledge, the order is currently in effect.

Registration, including the preparation of necessary copies, shall be without fee or cost.

Sec. 13. The county clerk may not notify the party against whom the order has been made that a foreign protection order has been registered.

Sec. 14. If the foreign protection order appears to be valid on its face, the county clerk shall:

- (1) comply with IC 5-2-9-6.3; and
- (2) provide the petitioner with a copy bearing proof of filing with the county clerk.

Sec. 15. Upon receipt of a copy of a foreign protection order under section 14 of this chapter, a city or town law enforcement agency or sheriff shall comply with IC 5-2-5-12 and IC 5-2-9-6.3.

Sec. 16. (a) If a foreign protection order filed with a county clerk under section 11 of this chapter is terminated or expires, the person who obtained the foreign protection order must:

- (1) file a notice of termination on a form prescribed or approved by the division of state court administration; and
- (2) file a copy of the order terminating the foreign protection order, if terminated by an order other than the foreign protection order;



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1 with the county clerk in Indiana with whom the foreign protection
2 order was filed.

3 (b) If a foreign protection order filed with a county clerk under
4 section 11 of this chapter is extended or modified, the person who
5 obtained the extension or modification must file:

- 6 (1) a notice of extension or modification on a form prescribed
7 or approved by the division of state court administration; and
8 (2) a copy of the order extending or modifying the foreign
9 protection order;

10 with the county clerk in Indiana with whom the foreign protection
11 order was filed.

12 Sec. 17. A county clerk shall:

- 13 (1) accept a notice and order filed under section 16 of this
14 chapter from a protected individual without charge; and
15 (2) comply with IC 5-2-9-6.3.

16 Sec. 18. A county clerk shall provide a protected person with
17 forms:

- 18 (1) prescribed or approved by the division of state court
19 administration; and
20 (2) required under section 12 or 16 of this chapter;

21 without charge.

22 Sec. 19. A circuit, superior, or probate court in Indiana may not
23 enforce under this chapter a provision of a foreign protection order
24 with respect to support. A provision concerning support may be
25 enforced under IC 31-18.

26 Sec. 20. A circuit, superior, or probate court in Indiana may not
27 enforce under this chapter a provision of a foreign protection order
28 with respect to custody. A provision concerning custody may be
29 enforced under IC 31-17-3.

30 Sec. 21. The provisions of IC 34-13-3-3 apply to an act or
31 omission by a governmental entity or an employee arising out of
32 the:

- 33 (1) registration or enforcement of a foreign protection order;
34 or
35 (2) detention or arrest of an alleged violator of a foreign
36 protection order.

37 Sec. 22. A protected individual who pursues remedies under this
38 chapter may pursue other legal or equitable remedies against the
39 respondent.

40 SECTION 40. IC 35-38-1-7.1, AS AMENDED BY P.L.183-1999,
41 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
42 JULY 1, 2001]: Sec. 7.1. (a) In determining what sentence to impose

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for a crime, the court shall consider:

- (1) the risk that the person will commit another crime;
- (2) the nature and circumstances of the crime committed;
- (3) the person's:
 - (A) prior criminal record;
 - (B) character; and
 - (C) condition;
- (4) whether the victim of the crime was less than twelve (12) years of age or at least sixty-five (65) years of age;
- (5) whether the person violated a protective order issued against the person under IC 31-15 or IC 31-16 (or IC 31-1-11.5 before its repeal) or IC 34-26-2 (or IC 34-4-5.1 before its repeal); and
- (6) any oral or written statement made by a victim of the crime.

(b) The court may consider the following factors as aggravating circumstances or as favoring imposing consecutive terms of imprisonment:

- (1) The person has recently violated the conditions of any probation, parole, or pardon granted to the person.
- (2) The person has a history of criminal or delinquent activity.
- (3) The person is in need of correctional or rehabilitative treatment that can best be provided by commitment of the person to a penal facility.
- (4) Imposition of a reduced sentence or suspension of the sentence and imposition of probation would depreciate the seriousness of the crime.
- (5) The victim of the crime was less than twelve (12) years of age or at least sixty-five (65) years of age.
- (6) The victim of the crime was mentally or physically infirm.
- (7) The person committed a forcible felony while wearing a garment designed to resist the penetration of a bullet.
- (8) The person committed a sex crime listed in subsection (e) and:
 - (A) the crime created an epidemiologically demonstrated risk of transmission of the human immunodeficiency virus (HIV) and involved the sex organ of one (1) person and the mouth, anus, or sex organ of another person;
 - (B) the person had knowledge that the person was a carrier of HIV; and
 - (C) the person had received risk counseling as described in subsection (g).
- (9) The person committed an offense related to controlled substances listed in subsection (f) if:
 - (A) the offense involved:



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- 1 (i) the delivery by any person to another person; or
- 2 (ii) the use by any person on another person;
- 3 of a contaminated sharp (as defined in IC 16-41-16-2) or other
- 4 paraphernalia that creates an epidemiologically demonstrated
- 5 risk of transmission of HIV by involving percutaneous contact;
- 6 (B) the person had knowledge that the person was a carrier of
- 7 the human immunodeficiency virus (HIV); and
- 8 (C) the person had received risk counseling as described in
- 9 subsection (g).
- 10 (10) The person committed the offense in an area of a
- 11 consolidated or second class city that is designated as a public
- 12 safety improvement area by the Indiana criminal justice institute
- 13 under IC 36-8-19.5.
- 14 (11) The injury to or death of the victim of the crime was the
- 15 result of shaken baby syndrome (as defined in IC 16-41-40-2).
- 16 (12) Before the commission of the crime, the person administered
- 17 to the victim of the crime, without the victim's knowledge, a
- 18 sedating drug or a drug that had a hypnotic effect on the victim,
- 19 or the person had knowledge that such a drug had been
- 20 administered to the victim without the victim's knowledge.
- 21 (13) The person:
- 22 (A) committed trafficking with an inmate under IC 35-44-3-9;
- 23 and
- 24 (B) is an employee of the penal facility.
- 25 **(14) The person committed the offense in the presence or**
- 26 **within hearing of a person who is less than fifteen (15) years**
- 27 **of age who was not the victim of the offense.**
- 28 (c) The court may consider the following factors as mitigating
- 29 circumstances or as favoring suspending the sentence and imposing
- 30 probation:
- 31 (1) The crime neither caused nor threatened serious harm to
- 32 persons or property, or the person did not contemplate that it
- 33 would do so.
- 34 (2) The crime was the result of circumstances unlikely to recur.
- 35 (3) The victim of the crime induced or facilitated the offense.
- 36 (4) There are substantial grounds tending to excuse or justify the
- 37 crime, though failing to establish a defense.
- 38 (5) The person acted under strong provocation.
- 39 (6) The person has no history of delinquency or criminal activity,
- 40 or the person has led a law-abiding life for a substantial period
- 41 before commission of the crime.
- 42 (7) The person is likely to respond affirmatively to probation or

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short term imprisonment.

(8) The character and attitudes of the person indicate that the person is unlikely to commit another crime.

(9) The person has made or will make restitution to the victim of the crime for the injury, damage, or loss sustained.

(10) Imprisonment of the person will result in undue hardship to the person or the dependents of the person.

(11) The person was convicted of a crime involving the use of force against a person who had repeatedly inflicted physical or sexual abuse upon the convicted person and evidence shows that the convicted person suffered from the effects of battery as a result of the past course of conduct of the individual who is the victim of the crime for which the person was convicted.

(d) The criteria listed in subsections (b) and (c) do not limit the matters that the court may consider in determining the sentence.

(e) For the purposes of this article, the following crimes are considered sex crimes:

(1) Rape (IC 35-42-4-1).

(2) Criminal deviate conduct (IC 35-42-4-2).

(3) Child molesting (IC 35-42-4-3).

(4) Child seduction (IC 35-42-4-7).

(5) Prostitution (IC 35-45-4-2).

(6) Patronizing a prostitute (IC 35-45-4-3).

(7) Incest (IC 35-46-1-3).

(8) Sexual misconduct with a minor under IC 35-42-4-9(a).

(f) For the purposes of this article, the following crimes are considered offenses related to controlled substances:

(1) Dealing in cocaine or a narcotic drug (IC 35-48-4-1).

(2) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).

(3) Dealing in a schedule IV controlled substance (IC 35-48-4-3).

(4) Dealing in a schedule V controlled substance (IC 35-48-4-4).

(5) Possession of cocaine or a narcotic drug (IC 35-48-4-6).

(6) Possession of a controlled substance (IC 35-48-4-7).

(7) Dealing in paraphernalia (IC 35-48-4-8.5).

(8) Possession of paraphernalia (IC 35-48-4-8.3).

(9) Offenses relating to registration (IC 35-48-4-14).

(g) For the purposes of this section, a person received risk counseling if the person had been:

(1) notified in person or in writing that tests have confirmed the presence of antibodies to the human immunodeficiency virus (HIV) in the person's blood; and

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(2) warned of the behavior that can transmit HIV.

SECTION 41. IC 35-45-10-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 5. (a) A person who stalks another person commits stalking, a Class D felony.

(b) The offense is a Class C felony if at least one (1) of the following applies:

(1) A person:

(A) stalks a victim; and

(B) makes an explicit or an implicit threat with the intent to place the victim in reasonable fear of:

(i) sexual battery (as defined in IC 35-42-4-8);

(ii) serious bodily injury; or

(iii) death.

(2) A protective order or other judicial order under any of the following statutes has been issued by the court to protect the same victim or victims from the person and the person has been given actual notice of the order:

(A) IC 31-15, IC 31-16, IC 31-17, or IC 31-1-11.5 before its repeal (dissolution of marriage, legal separation, child support, and child custody).

(B) IC 31-34, IC 31-37, or IC 31-6-4 before its repeal (delinquent children and children in need of services).

(C) IC 31-32 or IC 31-6-7 before its repeal (procedure in juvenile court).

(D) IC 34-26-2 or IC 34-4-5.1 before its repeal (protective order to prevent abuse).

(3) An order issued as a condition of pretrial release, including release on bail or personal recognizance, or pretrial diversion that orders the person to refrain from any direct or indirect contact with another person.

(4) An order issued as a condition of probation that orders the person to refrain from any direct or indirect contact with another person.

(5) A protective order issued under IC 31-14-16 in a paternity action.

(6) An order issued in another state that is substantially similar to an order described in subdivisions (2) through (5).

(7) An order that is substantially similar to an order described in subdivisions (2) through (5) and is issued by an Indian:

(A) tribe;

(B) band;

(C) pueblo;



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1 (D) nation; or

2 (E) group or community that is organized, including an
3 Alaska Native village or regional or village corporation
4 as defined in or established under the Alaska Native
5 Claims Settlement Act (43 U.S.C. 1601 et seq.);

6 that is recognized as eligible for the special programs and
7 services provided by the United States to Indians because of
8 their special status as Indians.

9 ~~(7)~~ (8) A criminal complaint of stalking that concerns an act by
10 the person against the same victim or victims is pending in a court
11 and the person has been given actual notice of the complaint.

12 (c) The offense is a Class B felony if:

13 (1) the act or acts were committed while the person was armed
14 with a deadly weapon; or

15 (2) the person has an unrelated conviction for an offense under
16 this section against the same victim or victims.

17 (d) Notwithstanding subsection (a), the court may enter judgment
18 of conviction of a Class A misdemeanor and sentence accordingly if
19 the court finds mitigating circumstances. The court may consider the
20 mitigating circumstances in IC 35-38-1-7.1(C) in making a
21 determination under this subsection. However, the criteria listed in
22 IC 35-38-1-7.1(C) do not limit the matters the court may consider in
23 making its determination.

24 (e) Notwithstanding subsection (b), the court may enter judgment
25 of conviction of a Class D felony and sentence accordingly if the court
26 finds mitigating circumstances. The court may consider the mitigating
27 circumstances in IC 35-38-1-7.1(C) in making a determination under
28 this subsection. However, the criteria listed in IC 35-38-1-7.1(C) do not
29 limit the matters the court may consider in making its determination.

30 SECTION 42. IC 35-46-1-15.1 IS AMENDED TO READ AS
31 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 15.1. (a) A person who
32 knowingly or intentionally violates:

33 (1) a protective order issued under:

34 (A) IC 34-26-2-12(1)(A) (or IC 34-4-5.1-5(a)(1)(A) before its
35 repeal);

36 (B) IC 34-26-2-12(1)(B) (or IC 34-4-5.1-5(a)(1)(B) before its
37 repeal); or

38 (C) IC 34-26-2-12(1)(C) (or IC 34-4-5.1-5(a)(1)(C) before its
39 repeal);

40 that orders the respondent to refrain from abusing, harassing, or
41 disturbing the peace of the petitioner;

42 (2) an emergency protective order issued under IC 34-26-2-6(1),

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IC 34-26-2-6(2), IC 34-26-2-6(3), (or IC 34-4-5.1-2.3(a)(1)(A),
 IC 34-4-5.1-2.3(a)(1)(B), or IC 34-4-5.1-2.3(a)(1)(C) before their
 repeal) that orders the respondent to refrain from abusing,
 harassing, or disturbing the peace of the petitioner;
 (3) a temporary restraining order issued under IC 31-15-4-3(2),
 IC 31-15-4-3(3), IC 31-16-4-2(a)(2), or IC 31-16-4-2(a)(3) (or
 IC 31-1-11.5-7(b)(2) or IC 31-1-11.5-7(b)(3) before their repeal)
 that orders the respondent to refrain from abusing, harassing, or
 disturbing the peace of the petitioner;
 (4) an order in a dispositional decree issued under IC 31-34-20-1,
 IC 31-37-19-1, or IC 31-37-19-5 (or IC 31-6-4-15.4 or
 IC 31-6-4-15.9 before their repeal) or an order issued under
 IC 31-32-13 (or IC 31-6-7-14 before its repeal) that orders the
 person to refrain from direct or indirect contact with a child in
 need of services or a delinquent child;
 (5) an order issued as a condition of pretrial release, **including
 release on bail or personal recognizance**, or pretrial diversion
 that orders the person to refrain from any direct or indirect contact
 with another person;
 (6) an order issued as a condition of probation that orders the
 person to refrain from any direct or indirect contact with another
 person;
 (7) a protective order issued under IC 31-15-5 or IC 31-16-5 (or
 IC 31-1-11.5-8.2 before its repeal) that orders the respondent to
 refrain from abusing, harassing, or disturbing the peace of the
 petitioner;
 (8) a protective order issued under IC 31-14-16 in a paternity
 action;
 (9) a protective order issued under IC 31-34-17 in a child in need
 of services proceeding or under IC 31-37-16 in a juvenile
 delinquency proceeding that orders the respondent to refrain from
 having direct or indirect contact with a child; ~~or~~
 (10) an order issued in ~~a~~ **another** state ~~other than Indiana~~ that is
 substantially similar to an order described in subdivisions (1)
 through (9), **regardless of whether the order was issued in a
 criminal or civil proceeding; or**
 (11) **an order that is substantially similar to an order
 described in subdivisions (1) through (9) and is issued by an
 Indian:**
 (A) tribe;
 (B) band;
 (C) pueblo;



1 (D) nation; or

2 (E) group or community that is organized, including an
3 Alaska Native village or regional or village corporation
4 as defined in or established under the Alaska Native
5 Claims Settlement Act (43 U.S.C. 1601 et seq.);

6 that is recognized as eligible for the special programs and
7 services provided by the United States to Indians because of
8 their special status as Indians, regardless of whether the order
9 was issued in a criminal or civil proceeding;

10 commits invasion of privacy, a Class B misdemeanor. However, the
11 offense is a Class A misdemeanor if the person has a prior unrelated
12 conviction for an offense under this section.

13 (b) In addition to any other penalty imposed for conviction of a
14 Class A misdemeanor under this section, if the violation of the
15 protective order results in bodily injury to the petitioner, the court shall
16 order the defendant to be imprisoned for five (5) days. A five (5) day
17 sentence under this subsection may not be suspended. The court may
18 require the defendant to serve the five (5) day term of imprisonment in
19 an appropriate facility at whatever time or intervals, consecutive or
20 intermittent, the court determines to be appropriate. However:

21 (1) at least forty-eight (48) hours of the sentence must be served
22 consecutively; and

23 (2) the entire five (5) day sentence must be served within six (6)
24 months after the date of sentencing.

25 (c) Notwithstanding IC 35-50-6, a person does not earn credit time
26 while serving a five (5) day sentence under subsection (b).

27 SECTION 43. IC 35-46-1-20 IS ADDED TO THE INDIANA
28 CODE AS A NEW SECTION TO READ AS FOLLOWS
29 [EFFECTIVE JULY 1, 2001]: **Sec. 20. A law enforcement officer**
30 **may enforce a foreign protection order (as defined in**
31 **IC 34-6-2-48.5) in conformity with the procedures in**
32 **IC 34-26-2.5-10.**

33 SECTION 44. [EFFECTIVE JULY 1, 2001] (a) IC 5-2-5 and
34 IC 5-2-9, both as amended by this act, and IC 34-6-2.5, as added by
35 this act, apply to foreign protection orders issued before, on, or
36 after July 1, 2001.

37 (b) IC 33-19-4-1, IC 33-19-5-4, and IC 34-26-2-4, all as amended
38 by this act, apply only to proceedings commenced after the
39 effective date of this SECTION.

40 (c) IC 35-38-1-7.1, as amended by this act, applies to all
41 convictions for a crime entered after the effective date of this
42 SECTION.



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1 (d) IC 35-45-10-5 and IC 35-46-1-15.1, both as amended by this
 2 act, apply only to offenses committed after the effective date of this
 3 SECTION.

4 SECTION 45. [EFFECTIVE UPON PASSAGE] (a) The division
 5 of state court administration shall:

6 (1) prescribe or approve by the initial forms required by
 7 IC 34-26-2.5-12 and IC 34-26-2.5-16, as added by this act;

8 (2) make the forms available to county clerks; and

9 (3) approve or prescribe nonconfidential forms required
 10 under IC 34-26-2-2(2), as amended by this act;
 11 before July 1, 2001. The forms described in subdivision (3) must be
 12 designed with a format that allows for the easy separation of
 13 confidential information concerning the petitioner from
 14 information that a respondent needs to prepare a defense to the
 15 allegations raised by the petition.

16 (b) IC 5-2-9-7, IC 34-26-2-2, IC 34-26-2-6, IC 34-26-2-11, and
 17 IC 34-26-2-12, all as amended by this act, apply only to petitions
 18 for issuance of a protective order filed with a court after June 30,
 19 2001.

20 (c) Notwithstanding IC 5-2-5-12(a)(5), the state police
 21 department has until January 1, 2002 to modify its computer
 22 system to allow for the entry of foreign protection orders into the
 23 Indiana data and communication system (IDACS).

24 (d) This SECTION expires July 1, 2001.

25 SECTION 46. An emergency is declared for this act.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred House Bill 1874, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 7, line 18, after "order" insert "**, if reasonably ascertainable from the information received**".

Page 7, line 20, strike "and".

Page 7, between lines 21 and 22, begin a new line double block indented and insert:

"(E) the name of the petitioner and any other protected parties;

(F) the Social Security number, date of birth, and physical description of each person who is the subject of the Indiana protection order, if reasonably ascertainable from the information received;

(G) the date the Indiana protection order expires;

(H) a caution indicator stating whether a person who is the subject of the Indiana protection order is believed to be armed and dangerous, if reasonably ascertainable from the information received; and

(I) if furnished, a Brady record indicator stating whether a person who is the subject of the Indiana protection order is prohibited from purchasing or possessing a firearm under federal law, if reasonably ascertainable from the information received;"

Page 7, line 33, after "terminated" insert ",".

Page 7, line 33, strike "or expires,".

Page 9, line 24, delete "and".

Page 9, line 26, delete "whether",

Page 9, between lines 29 and 30, begin a new line double block indented and insert:

"(I) the name and identification number of the officer who serves a foreign protection order, if reasonably ascertainable from the information received; and

(J) the manner in which the foreign protection order is served, if reasonably ascertainable from the information received;"

Page 10, line 3, after "terminated" delete "or expires".

Page 10, line 29, after "person" delete ",".

Page 10, line 29, after "person;" insert "**, except the nonconfidential part of a petition for a protective order that is**

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prescribed or approved by the division of state court administration under IC 34-26-2-2(2);".

Page 11, delete lines 1 through 19, begin a new paragraph and insert:

"SECTION 12. IC 33-11.6-4-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 15. (a) **Subject to subsection (c)**, the costs consist of:

(1) a township docket fee equal to five dollars (\$5) plus forty-five percent (45%) of the infraction or ordinance violation costs fee under IC 33-19-5-2;

(2) bailiff's service of process by registered or certified mail fee of six dollars (\$6) for each service;

(3) the cost for the personal service of process by the bailiff or other process server in the amount of eight dollars (\$8) for each service, with the exception that:

(A) personal service to execute a warrant for a protective order under IC 34-26-2 (or IC 34-4-5.1 before its repeal) shall cost a fee of twelve dollars (\$12); and

(B) writs of restitution and writs of replevin shall cost a fee of twelve dollars (\$12);

(4) witness fees, if any, in the amount provided by IC 33-19-1-6 to be taxed and charged in the circuit court of the county; and

(5) a redocketing fee, if any, of five dollars (\$5).

Subject to subsection (c), the docket fee and the cost for the initial service of process shall be paid upon the institution of each case.

Subject to subsection (c), the cost of service rendered subsequent to the initial service shall be assessed and paid after such service has been made, and the cost of witness fees shall be paid before the witnesses are called.

(b) If the amount of the township docket fee computed under subsection (a)(1) is not equal to a whole number, the amount shall be rounded to the next highest whole number.

(c) The provisions of IC 33-19-4.5 (costs related to domestic violence offenses) apply to a small claims court, bailiff, sheriff, and witnesses to the same extent as if the small claims court were a court listed in IC 33-19-1-1.

SECTION 13. IC 33-17-1-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 11. (a) The clerk shall provide each person filing a petition for the issuance of a protective order under IC 34-26-2 without the assistance of an attorney the following information:

(1) The procedure for obtaining a protective order.



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- (2) When a protective order becomes effective.
- (3) Procedures to follow when a protective order is violated.
- (4) Information concerning the waiver of fees under IC 33-19-2-6.**

(b) The information required under subsection (a) must be printed in a manner that can be easily understood by a person who is not an attorney.

(c) The attorney general shall develop an appropriate form to provide the information referred to in subsection (a).

SECTION 14. IC 33-19-4.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]:

Chapter 4.5. Costs Related to Domestic Violence Offenses

Sec. 1. This chapter applies to a person who files a motion, petition, or complaint with a court seeking a protective order or an order to enforce a foreign protection order to protect the person from any of the following:

- (1) Domestic violence.**
- (2) Sexual assault.**
- (3) Stalking.**

Sec. 2. (a) As used in this chapter, "domestic violence" means conduct against a person who is a family or household member that is prohibited by:

- (1) a misdemeanor or felony under the laws of the United States, a state, or an Indian tribe that has as an element the use, attempted use, or threatened use of physical force against the person or property of another; or**
- (2) any other misdemeanor or felony under the laws of the United States, a state, or an Indian tribe that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense;**

regardless of whether the conduct results in criminal prosecution or the person who engages in the conduct is an adult.

(b) The term does not include an act of self-defense.

Sec. 3. For purposes of this chapter, a person is a family or household member of another person if the person is any of the following:

- (1) A spouse or former spouse of the other person.**
- (2) A person who has a child in common with the other person.**
- (3) A person who is living or was living with the other person.**



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- (4) A person who is dating or was dating the other person.
- (5) A person who is having a sexual relationship or was having a sexual relationship with the other person.
- (6) The natural or adopted child of the other person.
- (7) A person less than eighteen (18) years of age who is related to a person described in subdivisions (1) through (6).

Sec. 4. As used in this chapter, "foreign protection order" has the meaning set forth in IC 34-6-2-48.5.

Sec. 5. As used in this chapter, "Indian tribe" has the meaning set forth in IC 34-6-2-66.7.

Sec. 6. As used in this chapter, "protective order" has the meaning set forth for "protection order" in IC 34-6-2-121.6.

Sec. 7. As used in this chapter, "sexual assault" means conduct that is:

- (1) prohibited by IC 35-42-4 (sex crimes), IC 35-44-7 (sexual misconduct by a service provider with a detainee), or IC 35-46-1-3 (incest);
- (2) prohibited by a misdemeanor or felony under the laws of the United State, a state, or an Indian tribe that is substantially similar to an offense described in subdivision (1); or
- (3) an attempt to engage in conduct described in subdivision (1) or (2);

regardless of whether the conduct results in criminal prosecution or the person who engages in the conduct is an adult.

Sec. 8. As used in this chapter, "stalking" means conduct that is:

- (1) prohibited by IC 35-45-10-5 (stalking);
- (2) prohibited by a misdemeanor or felony under the laws of the United State, a state, or an Indian tribe that is substantially similar to an offense described in subdivision (1); or
- (3) an attempt to engage in conduct described in subdivision (1) or (2);

regardless of whether the conduct results in criminal prosecution or the person who engages in the conduct is an adult.

Sec. 9. Notwithstanding any other law, the clerk may not collect a fee or other reimbursement for the filing, issuance, registration, or service of any of the following:

- (1) A warrant related to an action for a protective order or to enforce a foreign protection order.
- (2) A motion, petition, or complaint for a protective order or to enforce a foreign protection order.

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(3) A protective order or an order enforcing a foreign protection order.

(4) A witness subpoena related to an action for a protective order or to enforce a foreign protection order.

If a person seeks a protective order or an order enforcing a foreign protection order as part of another proceeding, the clerk may not collect a separate fee or reimbursement for the filing, issuance, registration, or service of the papers described in subdivisions (1) through (4).

Sec. 10. Prepayment of costs described in section 9 of this chapter are not required if the person, or a person acting on the person's behalf, alleges under oath or affirmation in the motion, petition, or complaint seeking the protective order or order enforcing a foreign protection order that the person is or fears that the person will be a victim of domestic violence, sexual assault, or stalking.

Sec. 11. Unless the court finds evidence of fraud, the court shall waive the obligation that the person seeking the protective order or order enforcing a foreign protection order would otherwise have to pay the costs described in section 9 of this chapter if:

(1) the person, or another person acting on the person's behalf, makes the allegations described in section 10 of this chapter; or

(2) the court otherwise determines that the person is a person seeking protection from domestic violence, sexual assault, or stalking.

Sec. 12. This section does not prevent the collecting of costs from a party against whom a protective order or order enforcing a foreign protection order is sought."

Page 11, line 32, after "\$100)" delete "," and insert ".".

Page 11, line 32, strike "except as provided in subsection".

Page 11, line 32, delete "(b)," and insert "(b)".

Page 11, delete line 33.

Page 11, line 34, strike "(b)".

Page 11, line 34, delete "Subject to IC 34-26-2-4, for" and insert "For".

Page 11, line 34, strike "each proceeding for the issuance".

Page 11, strike lines 35 through 42.

Page 12, strike lines 1 through 7.

Page 12, line 8, strike "(c)" and insert "(b)".

Page 12, delete lines 19 through 35.

Page 13, line 18, after "48.5" delete "and" and insert ",".

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Page 13, line 18, after "71.7" insert ", and 121.6".

Page 14, line 12, after "121.6." insert "(a)".

Page 14, line 15, delete "under the domestic violence laws".

Page 14, line 16, after "in" insert ":",

Page 14, line 16, delete "violent or", begin new line block indented and insert:

"(1) violent or threatening acts against;

(2) harassment of;

(3) contact or communication with; or

(4) physical proximity to;

another person, including temporary and final orders issued by civil and criminal courts.

(b) The term does not include a support or child custody order issued under the dissolution and child custody laws of a state or Indian tribe, except to the extent that the order is entitled to full faith and credit under a federal law other than 18 U.S.C. 2265.

(c) The term applies to an order regardless of whether the order is obtained by filing an independent action or as a pendente lite order in another proceeding if any civil order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection."

Page 14, delete lines 17 through 18.

Page 17, between lines 12 and 13, begin a new paragraph and insert:

"SECTION 36. IC 34-26-2-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 1. A person may petition any court of record or a small claims court established under IC 33-11.6-1-3 for a protective order on behalf of that person or a member of the petitioner's household.

SECTION 3. IC 34-26-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 2. The petition:

(1) must include the name of the petitioner and the name and address (if known) of the respondent;

(2) must include, on a separate or detachable nonconfidential form prescribed or approved by the division of state court administration:

(A) any allegation concerning the date or manner of specific acts or feared acts of abuse, harassment, or disruption of the peace of the petitioner or members of the petitioner's household or any allegations concerning specific damage to or the fear of damage to any property of the petitioner; and

(B) if the petitioner is requesting that the respondent refrain from entering or damaging real property, an

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indication of whether the petitioner knows or believes that the petitioner and the respondent are disputing who owns, or has a lease or easement to use, the real property;

(3) must include a request that, if the court grants the protective order, the court shall order the respondent:

(A) to refrain from abusing, harassing, or disturbing the peace of the petitioner, by either direct or indirect contact;

(B) to refrain from abusing, harassing, or disturbing the peace of a member of the petitioner's household, by either direct or indirect contact;

(C) to refrain from entering the property of the petitioner, jointly owned or leased property of the petitioner and respondent if the respondent is not the sole owner or lessee, or any other property as specifically described in the petition;

(D) to refrain from damaging any property of the petitioner;

(E) if the petitioner and respondent are married and if a proceeding for dissolution of marriage or legal separation is not pending:

(i) to be evicted from the dwelling of the petitioner if the respondent is not the sole owner or lessee of the petitioner's dwelling;

(ii) to not transfer, encumber, damage, conceal, or otherwise dispose of property jointly owned with the petitioner or that is an asset of the marriage;

(iii) to pay child support to the custodian of any minor children of the parties alone or with the other party;

(iv) to pay maintenance to the other party; or

(v) to perform a combination of acts listed in items (i) through (iv);

(4) must be sworn to by the petitioner;

(5) must include a request that the court set a date for a protective order hearing under this chapter;

(6) must be accompanied by a confidential form concerning protective orders prescribed or approved by the division of state court administration; and

(7) may include a request that the court order counseling or other social services, including domestic violence education, for the petitioner, the respondent, or both."

Page 17, line 14, delete "A petitioner is" and insert "**The court:**

(1) shall order the clerk of the court to waive any filing fees required for a proceeding under this chapter if IC 33-19-4.5 applies; and

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(2) may order filing fees to be paid by the respondent after a hearing held under this chapter."

Page 17, delete lines 15 through 27.

Page 17, delete lines 35 through 42.

Page 18, delete lines 1 through 16.

Page 18, between lines 16 and 17, begin a new paragraph and insert:

"SECTION 33. IC 34-26-2-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 6. **(a)** The emergency protective order issued under section 5 of this chapter may direct the respondent to refrain from:

- (1) abusing, harassing, or disturbing the peace of the petitioner by either direct or indirect contact;
- (2) abusing, harassing, or disturbing the peace of a member of the petitioner's household, by either direct or indirect contact;
- (3) entering the property of the petitioner or any other property as specifically described in the petition; or
- (4) damaging any property of the petitioner.

(b) If the court determines on the face of the petition that the petition for a protective order arises out of a dispute over who owns, or has a lease or an easement to use, real property, the court may:

- (1) issue an emergency protective order under subsection (a) without an order under subsection (a)(3); or**
- (2) deny the emergency protective order, if the likelihood of future abuse or harassment is insubstantial.**

SECTION 34. IC 34-26-2-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 11. (a) When a petition is filed, the clerk shall issue a summons to appear at a hearing to the respondent that:

- (1) gives notice of the date, time, and place of the hearing; and
- (2) informs the respondent that the respondent must appear before the court to answer the petition.

(b) The clerk shall serve the respondent with:

- (1) the summons to appear; and**
- (2) a copy of the nonconfidential for submitted as part of the petition under section 2(2) of this chapter;**

in accordance with Rule 4.1 of the Rules of Trial Procedure.

(c) Before complying with subsection (b)(2), the clerk shall separate the nonconfidential form submitted under section 2(2) of this chapter from the remainder of the petition.

SECTION 35. IC 34-26-2-12, AS AMENDED BY P.L.14-2000, SECTION 70, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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JULY 1, 2002]: Sec. 12. (a) A court shall set a date for a hearing concerning a petition described in section 2 of this chapter not more than thirty (30) days after the date the petition is filed with the court. At the hearing, if at least one (1) of the allegations described in the petition is proved by a preponderance of the evidence, the court:

(1) shall order the respondent:

(A) to refrain from abusing, harassing, or disturbing the peace of the petitioner, by either direct or indirect contact;

(B) to refrain from abusing, harassing, or disturbing the peace of a member of the petitioner's household, by either direct or indirect contact;

(C) to refrain from entering the property of the petitioner, jointly owned or leased property of the petitioner and the respondent if the respondent is not the sole owner or lessee, or any other property as specifically described in the petition;

(D) to refrain from damaging any property of the petitioner; and

(E) if the petitioner and respondent are married and if a proceeding for dissolution of marriage or legal separation is not pending:

(i) to be evicted from the dwelling of the petitioner if the respondent is not the sole owner or lessee of the petitioner's dwelling;

(ii) to not transfer, encumber, damage, conceal, or otherwise dispose of property jointly owned with the petitioner or that is an asset of the marriage;

(iii) to pay child support to the custodian of any minor children of the parties alone or with the other party;

(iv) to pay maintenance to the other party; or

(v) to perform a combination of the acts described in items (i) through (iv);

(2) may order the respondent to refrain from possessing a firearm (as defined in IC 35-47-1-5) during a period not longer than the period that the respondent is under the protective order if the court finds by clear and convincing evidence that the respondent poses a significant threat of inflicting serious bodily injury to the petitioner or a member of the petitioner's household or family; and

(3) may order counseling or other social services, including domestic violence education, for the petitioner or the respondent, or both, and may order the respondent to pay the costs of obtaining counseling or other social services for the petitioner or the respondent, or both.

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If the court prohibits the respondent from possessing a firearm under subdivision (2), the court shall notify the state police department of the restriction. The court may also order the confiscation under IC 35-47-3 of any firearms that the court finds the respondent to possess during the period that the protective order is in effect.

(b) If the court determines that the petition for a protective order arises out of a dispute over who owns, or has a lease or an easement to use, real property, the court may:

- (1) issue a protective order under subsection (a) without an order under subsection (a)(1)(C) or (a)(1)(D), or both; or**
- (2) deny the petition for a protective order, if the likelihood of future abuse or harassment against a petitioner is insubstantial.**

SECTION 36. IC 34-26-2-18 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 18. If a respondent is ordered to stay away from a petitioner, an invitation by a petitioner to a petitioner's residence or other place where a petitioner is located, does not:**

- (1) allow the respondent to go to the residence or other place where a petitioner is located; or**
- (2) waive or nullify any relief provided by the court in the order of protection."**

Page 19, line 27, delete "No" and insert **"If IC 33-19-4.5 applies to the protected individual, no"**.

Page 29, line 25, after "clerks;" insert **"and**

- (3) approve or prescribe nonconfidential forms required under IC 34-26-2-2(2), as amended by this act;"**.

Page 29 line 26, after "2001." insert **"The forms described in subdivision (3) must be designed with a format that allows for the easy separation of confidential information concerning the petitioner from information that a respondent needs to prepare a defense to the allegations raised by the petition."**

Page 29, between lines 26 and 27, and begin a new paragraph and insert:

"(b) IC 5-2-9-7, IC 34-26-2-2, IC 34-26-2-6, IC 34-26-2-11, and IC 34-26-2-12, all as amended by this act, apply only to petitions for issuance of a protective order filed with a court after June 30, 2001.

(c) The legislative council shall appoint an interim study commission on criminal law to make a study of the protective orders issued for crimes of domestic and family violence.



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(d) The legislative council is urged to assign the study of protective orders issued for crimes of domestic and family violence to the interim study commission on criminal law. The study shall be completed before the commencement of the 2002 legislative session.

(e) The interim study commission on criminal law shall operate under the direction of the legislative council, and shall issue a final report when directed to do so by the council.

(f) The affirmative votes of a majority of the members appointed to the commission are required for the commission to take any official action, including final reports.

(g) Notwithstanding IC 5-2-5-12(a)(5), the state police department has until January 1, 2002 to modify its computer system to allow for the entry of foreign protection orders into the Indiana data and communication system (IDACS).".

Page 29, line 27, delete "(b)" and insert "(g)".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1874 as introduced.)

DVORAK, Chair

Committee Vote: yeas 11, nays 0.

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1874 be amended to read as follows:

Page 28, delete line 30.

Page 28, line 31, delete "immune from civil and criminal liability for" and insert "**Sec. 21. The provisions of IC 34-13-3-3 apply to**".

Page 28, line 32, before "arising" insert "**by a governmental entity or an employee**".

Page 28, line 36, delete ";" and insert ".".

Page 28, delete lines 37 through 38.

(Reference is to HB 1874 as printed February 9, 2001.)

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SENATE MOTION

Mr. President: I move that Senators Kenley, Zakas and Young R be added as cosponsors of Engrossed House Bill 1874.

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COMMITTEE REPORT

Mr. President: The Senate Committee on Rules and Legislative Procedure, to which was referred House Bill No. 1874, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 36, delete lines 20 through 33.

Page 36, line 34, delete "(g)" and insert "(c)".

Page 36, line 38, delete "(h)" and insert "(d)".

and when so amended that said bill be reassigned to the Senate Committee on Corrections, Criminal and Civil Procedures.

(Reference is to HB 1874 as reprinted February 14, 2001.)

GARTON, Chairperson

Committee Vote: Yeas 7, Nays 0.

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